



# Limited Access Privilege Programs

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# Outline of Presentation

- Context - Essentials of fisheries management
- Magnuson-Stevens Act and LAPs
  - US Ocean Action Plan
  - Reauthorization of Magnuson-Stevens Act
  - LAP Guidelines
- LAP Science, Management and Policy Issues
  - Common Infrastructure
  - Cost Recovery

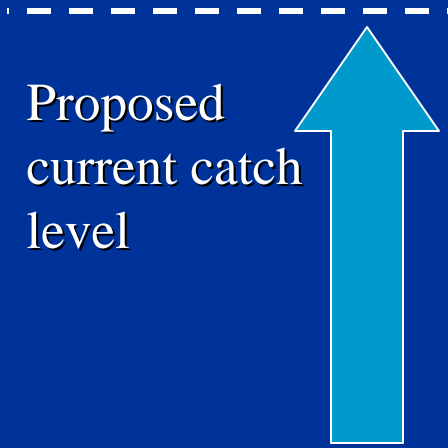
# Council Essentials of Fisheries Mgt.

Ensure proper use of a renewable resource: bounded by MSRA, guided by National Standards

- ✓ Goal is resource sustainability...as measured by stock assessments
- ➡ Job is about making choices
- ➡ Keystone choice: How much resource to use now, and how much to leave for later use?



For a given stock condition, how much harvest to allow now?



Proposed current catch level

Bad	Overfishing Overfished
Grey Area	Current gain vs. long term safety
Good	No overfishing (best) Not overfished

Once how much to catch is chosen...


...Who gets the catch and how?

Councils make choices about ...

Distribution

Efficiency of harvest  
and production

Incentives for participants



Documented  
in NEPA  
Analyses

# Fisheries stewardship is especially difficult because proper use is unlikely under “Open Access”

- Why? Incentive to conserve is diminished because individual can not capture benefits.
- Open access mgt. > race to fish > overcapacity, overfishing, overfished .
- Hence, Councils have to make choice between now and later because private actors will not adequately consider the future.

# Fisheries stewardship is even harder...

- ➔ When stocks are presently overfished  
(Current users must bear burden for future improvements).
- ➔ When information is uncertain  
(Requires a risk-averse approach)
- ✓ When multiple biological, economic and social drivers and goals intertwine  
(Complicating trade-offs)

# The Management Progression:

A limited access privilege means that the opportunity to annually harvest a specified amount of catch is granted to an entity. To understand why you may want to do this, let's consider the lessons learned from the way fisheries have been regulated over time:

Open Access  
To  
Limited Access  
To  
Limited Access Privileges



# Wide Choice of Policy Tools

## Open Access programs...

### Input Controls

Closed Season

Closed Areas

Gear Restrictions

Days at Sea

### Output Controls

Total Allowable Catches TACs

Trip Limits

...control activity of participants, but not their number.

**What do they really accomplish?**

**What sort of incentives do they provide?**

- ✓ All Open Access regulations increase the cost of harvesting fish, and except for enforceable TACs, put indirect and elastic controls on harvest and stock size. They can achieve biological goals, at least temporarily, but all economic gains will be dissipated.
- ✓ TACs, if properly enforced, can permanently achieve the biological goal, but they will provide incentives for economic gains to be dissipated.
- ✓ Private incentives are STILL not compatible with the aims of management.

# Limited Access Programs

Restrict *number* of individuals, vessels, units of gear, usually in combination with traditional controls.

## Input Controls

Closed Season

Closed Areas

Gear Restrictions

Days at Sea

## Output Controls

TACs

Trip Limits

Led to improvement in some cases depending on the nature of the fishery and the type of fishing technology. Other cases the improvement was short lived. Improvements results from smaller number of participants. The problem of incompatible incentives remained.

# Limited Access Privilege programs

- Individual Fishing Quota (IFQ)
- Regional Fishing Associations (RFAs)
- Fishing Communities (FCs)
- Others

LAPs, formerly called ITQs or IFQs, build on the above.

- Uses the one traditional control (Hard TACs) that can potentially be biologically successful.
- Recognizes the necessity of controlling participation.
- Is structured to make the incentives facing participants to be compatible with the goals of management.

# Wide Choice of Policy Tools

In Summary, the right tool will

- Address causes vs. symptoms
- Is feasible to administer and enforce
- Has a high likelihood of success

# Magnuson-Stevens Act Reauthorization

# Magnuson-Stevens Act

- In 1996 MSA reauthorization, mandated 4-year moratorium on new IFQs
- In 1999, required National Research Council Report *Sharing the Fish* released
- In 2004 U.S. Ocean Action Plan calls for expanded use of market-based approaches in fisheries management
- In 2007, new MSRA Limited Access Privilege program authority

# Limited Access Privileges

- Prior to 2007, two types of LAP Programs authorized:
  - IFQs
  - Community Development Quotas (limited to two geographic regions)
- Existing programs have generally resulted in:
  - Increases in per-unit product value
  - Decreases in total harvesting cost
  - Fishermen having greater control over when to fish, improving safety
  - Social objectives (CDQs)
  - Consolidation of fishery





# Limited Access Privilege Programs in U.S. Fisheries

Surf clam

Wreckfish

Sablefish/Halibut

AFA Pollock

Bering Sea Crab

Bluefin purse seine

NE Cape Hook Groundfish

Gulf Red snapper

Pacific Whiting Trawl Individual Quota

# Limited Access Privilege Focus

- Ocean Action Plan directed “NOAA to develop, in consultation with Regional Councils and interested parties, national guidelines for the development and management of IFQ allocations
- Administration seeks to ensure Regional Fishery Management Councils have maximum flexibility/discretion (within legal authority) necessary to implement LAP programs
- U.S. Commerce Secretary Gutierrez pledged to work with Regional Fishery Management Councils to double (to 16) the number of LAP programs by 2010

# MSRA and LAPs

- MSRA authorizes Limited Access Privilege (LAP) programs.

(See Jason Didden's Powerpoint in your Notebook for section by section LAP review)

# Section 303A titles

- (a) General
- (b) No Creation of Right, Title or Interest
- (c) Requirements for LAPs
  - fishing communities
  - regional fishery associations
  - participation
  - allocation
  - program initiation (referendum)
  - transferability
- (d) Auctions
- (e) Cost Recovery
- (f) Characteristics (renewal/revocation)
- (g) Assisted Purchase
- (h) Existing Programs
- (i) Transition Rules

# **What's the difference?**

**Individual Transferable Quota**

**Individual Fishing Quota**

**Dedicated Access Privilege**

**Limited Access Privilege**

**Conceptually they are the same thing...but subtle legal difference in MSRA**

The term 'limited access privilege' means a Federal permit, issued as part of a limited access system under section 303A to harvest a quantity of fish expressed by a unit or units representing a portion of the total allowable catch of the fishery that may be received or held for exclusive use by a person.

To explain this concept, consider each  
of the words in Individual Transferable Quota

# Individual Transferable Quota

## **Individual**

Participation is controlled because it is necessary to hold a privilege in order to fish. The entity holding the privilege can be a person, corporation, or partnership established under the laws of the US or any State, subject to eligibility and participation requirements established by the Act and /or the Council.

## **Transferable**

The privileges can also be made transferable. This allows individuals to adjust the amount of privileges held to match the efficient output point of their vessels. There will also be incentives for more efficient boats to buy the rights from less efficient boats.

There are many other advantages to allowing transferability



## Quota

Incentives are made compatible because the catch (quota) is assured and there is not need to race or build more fishing capacity than necessary. The privilege denominated in terms of a percentage of the TAC is usually called a quota share, QS. (It makes sense to specify the privilege in terms of a percentage of the TAC instead of an absolute amount of catch because the TAC may have to be changed over time.)

The annual harvest of a specific weight of fish is computed once the TAC is set.

# LAP Truisms

There is no one size fits all LAP program.

Not all fisheries should be managed via LAPs.

Because people are not told how to catch fish, LAP incentives exist to organize fishing activities to keep costs as low as possible and to produce the highest valued product.

LAPs should be designed in the same way that any other FMP is: Design the program so that it conforms with the MSA and will accomplish the stated management objectives.

# Initial Allocation

- Multiple factors to consider in allocation of privileges (history, participation, employment, investment, dependence)
- Acquisition of excessive shares prohibited
  - Maximum share must be established
  - Councils must establish procedures to address concerns over excessive geographic or other consolidation in the harvesting and processing sectors of the fishery

# Noteworthy

Regional Fishery Association defined as:

“...a voluntary association with established bylaws and operating procedures...consist of participants who hold quota share that are designated for use in RFA area, including commercial or recreational fishing, processing, fishery-dependent support business or fishing communities...NOT eligible to receive an initial allocation”

# Transferability

- Council must create policy and conditions that apply to the transferability of limited access privilege shares
- Process must be established for monitoring of transfers

# Auctions, Duration

- Collect royalties via auctions/other means but use subject to appropriations
- LAP is a permit issued for a period of not more than 10 years, renewable unless revoked for cause; program review every 5 years

# Cost recovery

- Authorized for management, data collection/analysis, and enforcement
- Cap is set on cost recovery at 3% ex-vessel value of landings
- Only authorized for LAP fisheries
- Councils identify and assess recoverable costs, provide for a fee program

# Special Referenda

- Sets referenda requirements for IFQ programs in
  - New England Council needs 2/3 voters' approval to implement IFQs
    - IFQ does not include a sector allocation
  - Gulf of Mexico Council needs majority of voters' approval to implement IFQs,
- NMFS must establish referenda guidelines



# LAP Guidelines

- *Design and use of limited access privilege programs*
  - Non-binding, technical report, pros and cons
  - Joint Council/NMFS Steering Committee
  - Was open to public comment, finalize/print in Nov.
  
- **Formal NMFS guidance**
  - Public comment period ended Sept. 30<sup>th</sup>
  - MSRA issues needing interpretive guidance
  - Public notice and comment rulemaking forthcoming

# Issues Affecting LAPs – Science, Management, and Policy

# Science Issues

## ■ Information Collection and Modeling

- Data not typically collected by NMFS are needed (see good discussion at [http://www.st.nmfs.noaa.gov/st5/workshop/2006/documents/DAPs/Data\\_collection\\_in\\_rationalized\\_fisheries.pdf](http://www.st.nmfs.noaa.gov/st5/workshop/2006/documents/DAPs/Data_collection_in_rationalized_fisheries.pdf))
- Education and outreach to stakeholders on alternative LAP systems is needed.
- Need to begin collecting data and models for evaluating the potential impact of LAPs well before they are implemented.

# Management Issues

- Integration with non-LAP programs
- Impact Analyses
  - Social and economic analyses require funding and expertise
- Common Infrastructure
  - Feasibility analysis of using present system(s) as a model to build a more generalized national core LAP infrastructure. Are there standardized approaches or types of infrastructure that can be adopted/modified efficiently to support future programs?

# Policy Issues

- Referenda to approve, various requirements
- Allocation/Eligibility to hold: processors, crew, communities, nationality
- Tension > new entrants vs. consolidation
- Administration/infrastructure – roles of NMFS & Councils
- Cap on cost recovery\*

# Policy Issue: Cost recovery\*

*What should NMFS do when the cost of a proposed fishery management plan provision exceeds our ability to pay for it?*

# Context

- The cost of implementing FMPs will continue to rise over time; NOAA forecasts a low probability of significant increases in appropriations
- Cost recovery authority is limited to the North Pacific Fishery Observer Fund and LAP programs.
- Costs in non-LAP fisheries cannot be recovered except for the administrative costs of issuing permits.

# Incremental Costs

- For historical and policy reasons, define LAP recoverable costs as the incremental costs of changing a current program to a LAP program

(Science and management generates costs for any FMP - limit recovery to the incremental costs of a LAP program to prevent barriers to their use)



# LAP Cost Recovery

- Currently cost recovery in LAP programs is limited to 3 percent of gross revenue.
- Preliminary estimates suggest LAP costs can readily exceed the cap
- Reliance on National Standard 7 weak (“minimize costs”)
- Administration MSA bill proposed adding required provision in 303(a)(1) that any FMP shall contain conservation and management measures that are “cost-effective considering the administrative cost of implementation and operation of the measure.”

# Trigger

- *What should be our policy on the approvability and implementation of FMPs, in particular LAP programs, relative to costs?*



# Options

- 1) No LAP FMP will be approved unless its cost recovery program can cover all incremental costs.
- 2) A LAP FMP will be subject to disapproval if its cost recovery program can not cover all incremental costs.
- 3) Any LAP FMP that meets the National Standards and other applicable law will be approved.

# Summary

- Open, participatory debate on policy
- Likely new guidance this year
- At least 2 new LAP programs in progress
- New authorities raise new policy, science and management questions
- How much of a factor will cost be to successful implementation of LAPs?